

renewal must independently comply with the above requirements; therefore, I am particularly and specifically to the individual case. The courts have also held that every and the proper application for extensions. In addition, I must review each affidavit for court-imposed requirements include probable cause, necessity, minimization, sealing, case for the numerous requirements which, if violated, can result in suppression. These a search warrant. Because of wiretap law and subsequent court cases, I must review the When I review a wiretap, the work is far more extensive than the simple review of disclosure.

case. In the case at bar, the Government has produced approximately 60,000 pages of disclosure is received to complete a neutral, fact-based, analysis of the wiretaps in a of disclosure in the case. It is my practice to request sixty days after the last "batch" As a court appointed wiretap expert on this case, I have not had time to review all served as an expert on surveillance and search warrants in a California trial. multi-defendant death penalty case. (*United States v. Raymond Llamas, et.al*) I have also June 22, 2005). In addition to other cases, I was the court appointed wiretap expert in a court appointed wiretap expert in *United States v. Gonzalez*, 2005 WL 1459569 (9th Cir. techniques, including wiretapping. I have testified in court on wiretap matters. I was a Currently, I am a consultant and expert witness in the area of law enforcement I was employed as an FBI Special Agent from approximately 1984-1994. Suzanne Doucette, being duly sworn, states as follows:

AFFIDAVIT OF SUZANNE DOUCETTE
THE UNITED STATES vs. DANA JARVIS, et.al

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

importance factor in wiretap review as the omission may be later adjudicated as material.

I must carefully review disclosure to find any omissions. Omissions are an

I. Omissions:

initiation of the wiretap. What, if anything, was not disclosed to the court?

The next step is to carefully examine the Government's case leading to the

Examination and analysis of the facts:

It is important for me to continue close communication with counsel and investigators. The investigation into the facts surrounding the affidavits throughout the wiretap analysis.

I meet with the investigator regarding any factual investigation. Together we continue investigation will have conducted some investigation for the defense. Whenever possible, with counsel to receive any input regarding the factual basis of the affidavits. Usually, an

After I have reviewed all the affidavits for the first time, my practice is to meet

B. Initial meetings:

"warrant" due to the necessity requirement and the extraordinary invasion of privacy. Affidavits will not have met with the legal requirements. A Title III warrant is a "super-warrant" to meet all of the elements. However, after further review, in some cases the will appear to meet all the elements. Thus, at first blush, the applications and investigators relying on pre-screened forms. Thus, at first blush, the applications by the courts. Normally, the applications and affidavits are drafted by skilled prosecutors analysis is a factual analysis to determine if the application contains the elements required

especially the affidavit the government filed in support of the application. My first

The first step in reviewing a wiretap is to closely examine the application, and

A. Factual Analysis:

required to examine each extension with the same scrutiny as the original affidavit.

to the case. Sometimes, instead of considering all the alternatives to wiretapping, the Government may rely upon "boilerplate" language, non-specific

D. Particularity:

and the amount of disclosure.

thorough and may require from 60-250 hours depending upon the complexity of the case defense to decide whether to pursue a *Franks* challenge. My review must be very examining of inconsistencies, if any. When I do find inconsistencies, it is up to the challenge may be brought. My review is not tailored to the outcome, but is simply an evidence that points to a material omission or misstatement upon which a *Franks* either suggests there is not a likely *Franks* violation, or in the alternative, that there is I am tasked with reviewing the discovery to gather the necessary evidence that

3. *Franks* review:

ignore any piece of disclosure.

evidence tucked away in the most unlikely piece of disclosure, therefore I must not misleading and material to the issuing judge. This examination may involve finding contains a knowing or reckless omission or distortion of facts that may have been disclosure to provide the defense with any information that may indicate that the affidavit painstaking vetting of the affidavit, "proving up" the Government's claims. I review the must look for any misstatements or falsehoods. This task is accomplished by a

During the examination of the Government's case leading up to the wiretap, I also

2. Misstatements or falsehoods:

to the issuing court.

As one possible example, the Government may have had more sources than it disclosed

Government's case at the point the wiretap is requested. Then, if there are extensions, I in conducting investigations. I must provide the defense with a detailed portrait of the investigation into the case. Additionally, I rely upon my own on the ground experience the Government's affidavit to the Government's disclosure, as well as the defense (traditional) investigative techniques were attempted. I perform this task by comparing goals. Thus, I must review the Government's investigation to find out if normal necessary because normal investigative techniques could not achieve the Government's The Government's Affidavit will aver to the issuing court that a wiretap is techniques were too dangerous to try?

3. Did the Government's Affidavit aver that traditional investigative techniques fail to accomplish the Government's goals?
2. Did the Government's Affidavit aver that traditional investigative techniques fail to try traditional investigative techniques and the
1. Did the Government try traditional investigative techniques and the

The necessity test is a three prong review.
E. Necessity review:
"boilerplate" language.
case at bar, or, in the alternative that the Government used generalizations and affidavit to try to determine if the assertions made by the Government are specific to the sometimes be found as a substitute for the particularity requirement. I must review the technique that are specific and particular to this case. Boilerplate language may crack without wiretapping. There must be reasons to proceed to the wiretapping government prefers to say that this type of case (e.g. gambling or narcotics) is too hard to

running. I must try to advise the defense as to what was reasonable surveillance in the wiretap, it conducts countless hours of surveillance after the wiretap is up and before the wiretap. Many times, after the Government claims that it could not conduct surveillance before the wiretap, it various times of the day and night.

“fixed-location” surveillance. Sometimes it is also necessary to visit these locations at to install a pole camera, park a van, conduct covert surveillance, and places to locate difficult.” Usually this inquiry requires me to examine every named location for places Often, I must visit locations where the Government deems surveillance to be “too surveillance documented in a timely manner within a surveillance reports?

tracking device, such as a “slap-on” beeper? Are any Government claims of counter-surveillance teams or an airplane to assist in surveillance? Did the Government utilize other fixed surveillance, audio or video surveillance? Did the Government utilize discovery, such as logs, etc.? Is the Government able to show that it used a pole camera, is the Government able to support its claims of surveillance with the appropriate Government should use a normal amount of resources over a reasonable period of time. the surveillance efforts equal surveillance efforts in other similar cases? The Government’s attempts at surveillance. Did the Government attempt surveillance? Did My review of traditional investigative techniques includes a review of the Surveillance:

necessity requirement and therefore requires the same level of scrutiny. Each subsequent application. Every extension must independently meet the same that each extension is requested. In my experience, there is often less “necessity” with must provide the defense with a detailed portrait of the Government’s case at the time

3. Confidential sources:

becomes more time consuming.

if my random checks are accurate. However, if I find problems then the investigation pen register were followed. In my experience, this review may take from four-six hours disclosure and the pen register records to determine if logical investigative leads from the

As a final step to the pen register/trap and trace review, I try to compare the

I look to see if the Government prepared an appropriate air time analysis.

software, and contractors, if any.

numerical count will require a further investigation into the Government's equipment, must take place to determine if all the numbers are "off." Sometimes, an incorrect numerical claims. When the numerical claims are incorrect, a much deeper investigation must take place to check the

claims. If the random checks are accurate, I do not usually continue to check the records by conducting random checks of the accuracy of the Government's numerical

I must review the statistical data in the Affidavit and review the pen register

2. Pen register and "trap and trace" investigations:

one or two days.

locations. I estimate that these visits will take from four to fourteen hours spread over In the case at bar, I have not had the time or opportunity to visit any surveillance

be brought to the attention of the defense and ultimately the court. misstatements or overstatements of the difficulties involved in surveillance, if any, may

surveillance were missed. My review of the discovery is conducted so that any Government's investigation to determine if opportunities to successfully conduct case at bar. My job is to review all of the surveillance logs and reports, as well as the

7. Grand jury:

Government utilize the fruits of the search warrants to conduct the logical investigation that became apparent from the search? If no search warrants were used, why not? Did the Government use search warrants to gather information? Did the

6. Search warrants:

determine whether trash covers should have been attempted. trash cover was performed, I must review the facts revealed in the discovery to help did the Government follow the logical investigation leads generated by the trash? If no Did the Government attempt trash covers? If the Government did collect trash,

5. Trash covers:

whether such an operation would have been reasonable under the circumstances. attempt at an undercover operation, I must find facts that help the defense determine operation? If so, was the operation given adequate time to bear fruit? If there was no Did the Government attempt to infiltrate the organization with an undercover

4. Undercover investigations:

the affidavit. Government. If so, the Government should report this information to the issuing court in determine whether government sources had a criminal record or some "deal" with the Government attempt to recruit and utilize sources in good faith? I must also try to accurately report the ability of the sources to penetrate the organization? Did the

sources of information not revealed to the court in the affidavit? Did the Government sources of information, such as confidential sources. In particular, were there any I must review the disclosure for information regarding the Government's

surveillance or a trash cover. As an example of the combination of another technique logical financial reports. The existence of other records is often discovered through targets' bank records, credit card records, mortgage and property records, as well as other law enforcement technique. Did the Government use the Grand Jury to obtain the subpoena power of the Federal Grand Jury is a vast, powerful, and effective

C. Financial investigations:

merely boilerplate.

facts to determine if this technique was considered, or if the statements of the Affiant are Government must then set forth those reasons in the affidavit. My job is discovering the may have logical reasons for refusing to utilize this technique. However, the Government rarely utilizes this technique prior to pursuing a wiretap. The Government Report. See S. REP. 90-1097-98, 1968 U.S.C.C.A.N. 2112, 2190. In my experience, the "immunity grant" was specifically highlighted in the Omnibus Crime Control Senate granting immunity to a lesser target? The "general questioning or interrogation under an Did the Government conduct an appropriate investigation into the feasibility of

B. Witnesses under a grant of immunity:

not?

were followed. Where no witnesses were brought before the Federal Grand Jury, why review the transcripts to determine if the logical investigative leads from these interviews Did the Government bring witnesses before the Federal Grand Jury? If so, I must

A. Witnesses:

There are three types of Federal Grand Jury inquiries that are very useful for the Government.

G. Sealing:

performed minimization as well as sworn law enforcement personnel. As monitors. As a consultant, I must determine if the contractors understood and produced to the defense. Additionally, in this case civilian contractors were employed in the case at bar, some minimization documents do not appear to have been necessary issues.

In the reports of the Government's progress are important to my analysis of minimization and I must review any periodic reports to the issuing court. (Ten day reports). These performed lawfully.

"sign-in/out" sheet, and the actual calls to determine if minimization was attempted and must review the training received by monitors, the minimization logs, the wiretap room After the appropriate review for necessity, I conduct a review of minimization.

Minimization:

agencies, and previous law enforcement wiretaps. and jailhouse sources, witness interviews, mail covers, reviewing information from other not limited to, controlled buys, consensual monitoring, exploitation of jailhouse "wires" Other techniques may useful in a specific case. These techniques include, but are

8. Other techniques:

allows the Government to bypass the Federal Grand Jury to obtain records. have the ability to use administrative subpoenas. The administrative subpoena power company to provide copies of the records. Additionally, various government agencies name. Upon this discovery, the Grand Jury will issue a subpoena to order the brokerage with a subpoena, the fruits of a trash cover may reveal a brokerage account in a target's

When I conduct a technical check to determine if the Government met the sealing requirement of the statute, I must visit the location where the sealed wiretap evidence is kept. Then, I will also review Government reports in order to determine whether the dates on the sealed evidence records match the dates contained in the Government reports. The Government must present the evidence for the court seal in a timely manner. Because the Government has yet to produce necessary disclosure, I cannot provide the defense with a neutral opinion regarding the wiretap at this time. The Government's letter to defense counsel, dated February 6, 2007, forwards selected transcripts from conversations among Confidential Source 2 (CS2), Confidential Source 3 (CS3) and certain targets of the wiretaps. The defense received these transcripts on approximately February 7, 2007. The above letter also informs the defense that the remaining transcripts are forthcoming at a later date. I cannot conduct a complete review without reviewing the conversations; therefore, my review is delayed until the Government produces the documents or the recordings of the conversations. The Government produced several boxes of discovery at the end of January 2007. These boxes include important DEA 6, reports of investigation, DEA 7a, reports of non-drug evidence collected, sealed plea agreements, ten day reports, as well as other documents that I must examine to complete my review.

The defense transcripts of the wiretaps are not completed at this time. In a complete wiretap review, I must compare the defense transcripts with the Government's transcripts and the Government's summaries provided to the court. In this case, the defense transcripts are very important because it appears that the Government did not complete wiretap review, I must compare the defense transcripts with the Government's transcripts and the Government's summaries provided to the court. In this case, the defense transcripts are very important because it appears that the Government did not

Q.F. 4. 309

My Commission Expires:

Notary Public

Suzanne a. Doucette

Subscribed and sworn to me this ~~31~~ day of ~~January~~, 2007, by Suzanne Doucette.

13th February

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

Suzanne Doucette

Suzanne Doucette

FURTHER, AFFIANT SAYETH NOT.

sixty days after the Government has produced complete discovery.

respectfully request a deadline after the transcripts are prepared and a date that is at least

this wiretap review is somewhere between 100-200 hours. In terms of a timeline, I

My best estimate as to the number of additional hours I will require to complete

In this case, the discovery received to date totals approximately 60,000 pages.

complete review of the discovery is required before I can provide an informed opinion.

and whether a *Franks* challenge may be present. In order to conduct a neutral review,

investigative techniques in good faith, meet with the technical requirements of the wiretap,

on several wiretap issues including, whether the Government employed traditional

I perform these time consuming, labor intensive tasks to help inform the defense

the minimization requirement until the defense transcripts are complete.

I cannot review the wiretap for the above court-imposed requirements, including

Prepare transcripts of all the intercepted phone calls.